

104TH CONGRESS  
2D SESSION

# S. 1646

To authorize and facilitate a program to enhance safety, training, research and development, and safety education in the propane gas industry for the benefit of propane consumers and the public, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 27 (legislative day, MARCH 26), 1996

Mr. DOMENICI (for himself, Mr. FORD, Mr. DOLE, Mr. LOTT, Mr. HEFLIN, Mr. SHELBY, Mr. FAIRCLOTH, Mr. SIMPSON, Mr. COCHRAN, Mr. INHOFE, Mr. WARNER, Mr. HELMS, Mr. McCONNELL, Mr. THURMOND, Mr. BURNS, Mr. JOHNSTON, Mr. BINGAMAN, Mr. NICKLES, Mr. LUGAR, Mrs. KASSEBAUM, Mr. COATS, and Mr. GRAMS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To authorize and facilitate a program to enhance safety, training, research and development, and safety education in the propane gas industry for the benefit of propane consumers and the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Propane Education  
5 and Research Act of 1996”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) propane gas (also known as liquefied petro-  
4 leum gas) is an essential energy commodity that pro-  
5 vides heat, hot water, cooking fuel, and motor fuel,  
6 and has many other uses to millions of Americans;

7 (2) the use of propane is especially important to  
8 rural citizens and farmers, offering an efficient and  
9 economical source of gas energy;

10 (3) propane has been recognized as a clean fuel  
11 and can contribute in many ways to reducing pollu-  
12 tion in cities and towns of the United States; and

13 (4) propane is primarily domestically produced,  
14 and the use of propane provides energy security and  
15 jobs for Americans.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) COUNCIL.—The term “Council” means a  
19 Propane Education and Research Council estab-  
20 lished under section 4.

21 (2) INDUSTRY.—The term “industry” means  
22 persons involved in the United States in—

23 (A) the production, transportation, and  
24 sale of propane; and

25 (B) the manufacture and distribution of  
26 propane utilization equipment.

1           (3) INDUSTRY TRADE ASSOCIATION.—The term  
2           “industry trade association” means an organization  
3           exempt from tax, under paragraph 3 or 6 of section  
4           501(c) of the Internal Revenue Code of 1986, that  
5           represents the propane industry.

6           (4) ODORIZED PROPANE.—The term “odorized  
7           propane” means propane that has had odorant  
8           added to it.

9           (5) PRODUCER.—The term “producer” means  
10          the owner of propane at the time at which the pro-  
11          pane is recovered at a gas processing plant or refin-  
12          ery.

13          (6) PROPANE.—The term “propane”—

14                (A) means a hydrocarbon, the chemical  
15                composition of which is predominantly  $C^3H^8$ ,  
16                whether recovered from natural gas or from  
17                crude oil; and

18                (B) includes liquefied petroleum gas or a  
19                mixture of liquefied petroleum gases.

20          (7) PUBLIC MEMBER.—The term “public mem-  
21          ber” means a member of the Council, other than a  
22          representative of producers or retail marketers, rep-  
23          resenting significant users of propane, public safety  
24          officials, academia, the propane research community,  
25          or other groups knowledgeable about propane.

1           (8) QUALIFIED INDUSTRY ORGANIZATION.—The  
 2           term “qualified industry organization” means the  
 3           National Propane Gas Association, the Gas Proc-  
 4           essors Association, a successor of the National Pro-  
 5           pane Gas Association or the Gas Processors Associa-  
 6           tion, or a group of retail producers or marketers  
 7           that collectively represent at least 25 percent of the  
 8           volume of propane produced or sold, respectively, in  
 9           the United States.

10           (9) RETAIL MARKETER.—The term “retail mar-  
 11           keter” means a person engaged primarily in the sale  
 12           of odorized propane to ultimate consumers or to re-  
 13           tail propane dispensers.

14           (10) RETAIL PROPANE DISPENSER.—The term  
 15           “retail propane dispenser” means a person that  
 16           sells, but is not engaged primarily in the business of  
 17           selling odorized propane to ultimate consumers.

18           (11) SECRETARY.—The term “Secretary”  
 19           means the Secretary of Energy.

20   **SEC. 4. REFERENDA.**

21           (a) CREATION OF PROGRAM.—

22           (1) IN GENERAL.—The qualified industry orga-  
 23           nizations may conduct a referendum among produc-  
 24           ers and retail marketers for the creation of a Pro-  
 25           pane Education and Research Council.

1           (2) EXPENSES.—A referendum under para-  
2 graph (1) shall be conducted at the expense of the  
3 qualified industry organizations.

4           (3) REIMBURSEMENT.—The Council, if estab-  
5 lished, shall reimburse the qualified industry organi-  
6 zations for the cost of the referendum accounting  
7 and documentation.

8           (4) INDEPENDENT AUDITING FIRM.—The ref-  
9 erendum shall be conducted by an independent au-  
10 diting firm agreed to by the qualified industry orga-  
11 nizations.

12          (5) VOTING RIGHTS.—Voting rights in the ref-  
13 erendum shall be based on the volume of propane  
14 produced or odorized propane sold in the calendar  
15 year previous to the year in which the referendum  
16 is conducted, or other representative period agreed  
17 to by the qualified industry organizations.

18          (6) CERTIFICATION OF VOLUME OF PRO-  
19 PANE.—All persons voting in the referendum shall  
20 certify to the independent auditing firm the volume  
21 of propane the person represents.

22          (7) APPROVAL.—On the approval of persons  
23 representing  $\frac{2}{3}$  of the total volume of propane voted  
24 in the retail marketer class and  $\frac{2}{3}$  of all propane

1 voted in the producer class, the Council shall be es-  
2 tablished.

3 (b) TERMINATION OR SUSPENSION.—

4 (1) REFERENDUM.—On the Council's initiative,  
5 or on petition to the Council by producers and retail  
6 marketers representing 35 percent of the volume of  
7 propane produced and sold, respectively, in the Unit-  
8 ed States, the Council shall conduct a referendum to  
9 determine whether the industry favors termination  
10 or suspension of the Council.

11 (2) EXPENSE.—A referendum under paragraph  
12 (1) shall be conducted at the expense of the Council.

13 (3) INDEPENDENT AUDITING FIRM.—The ref-  
14 erendum shall be conducted by an independent au-  
15 diting firm selected by the Council.

16 (4) TERMINATION OR SUSPENSION.—Termi-  
17 nation or suspension shall take effect if approved  
18 by—

19 (A) persons representing more than  $\frac{1}{2}$  of  
20 the total volume of odorized propane in the pro-  
21 ducer class and more than  $\frac{1}{2}$  of the total vol-  
22 ume of propane in the retail marketer class; or

23 (B) persons representing more than  $\frac{2}{3}$  of  
24 the total volume of propane in produced or sold  
25 in the United States.

1 **SEC. 5. PROPANE EDUCATION AND RESEARCH COUNCIL.**

2 (a) SELECTION OF MEMBERS.—

3 (1) SELECTION BY QUALIFIED INDUSTRY ORGA-  
4 NIZATIONS.—The qualified industry organizations  
5 shall select all retail marketer, public, and producer  
6 members of the Council.

7 (2) ALLOCATION.—The producer organizations  
8 shall select the producer members of the Council,  
9 the retail marketer organizations shall select retail  
10 marketer members, and all qualified industry organi-  
11 zations shall select the public members.

12 (3) VACANCIES.—Vacancies in unfinished terms  
13 of Council members shall be filled in the same man-  
14 ner as original appointments.

15 (b) REPRESENTATION.—In selecting members of the  
16 Council, the qualified industry organizations shall give due  
17 regard to selecting a Council that is representative of the  
18 industry, including representation of—

19 (1) gas processors and oil refiners among pro-  
20 ducers;

21 (2) interstate and intrastate operators among  
22 retail marketers;

23 (3) large and small companies among producers  
24 and retail marketers, including agricultural coopera-  
25 tives; and

26 (4) all geographic regions of the country.

1 (c) MEMBERSHIP.—

2 (1) IN GENERAL.—The Council shall consist of  
3 21 members, including—

4 (A) 9 members representing retail market-  
5 ers;

6 (B) 9 members representing producers;  
7 and

8 (C) 3 public members.

9 (2) QUALIFICATIONS.—Each Council member  
10 representing retail marketers or producers shall be a  
11 full-time employee or owner of a business in the in-  
12 dustry that the member represents or a representa-  
13 tive of an agricultural cooperative.

14 (3) DISQUALIFICATION.—No employee of a  
15 qualified industry organization or other industry  
16 trade association shall serve as a member of the  
17 Council, and no member of the Council may serve  
18 concurrently as an officer of the board of directors  
19 of a qualified industry organization or other industry  
20 trade association.

21 (4) LIMITED COMPANY REPRESENTATION.—Not  
22 more than 1 person from any company (or affiliate  
23 of the company) may serve on the Council at any  
24 given time.

25 (d) COMPENSATION.—



1           (1) IN GENERAL.—Subject to paragraph (2),  
2       Council members shall receive no compensation for  
3       services performed or reimbursement for expenses  
4       relating to services performed.

5           (2) EXCEPTION FOR PUBLIC MEMBERS.—A  
6       public member may, on request, be reimbursed for  
7       reasonable expenses directly related to participation  
8       by the member in Council meetings.

9       (e) TERMS.—

10           (1) LENGTH OF TERMS.—A Council member  
11       shall serve a term of 3 years.

12           (2) NUMBER OF TERMS.—A Council member  
13       may not serve more than 2 full consecutive terms.

14           (3) MAXIMUM CONSECUTIVE YEARS.—A mem-  
15       ber filling an unexpired term may serve not more  
16       than 7 consecutive years.

17           (4) RETURN OF FORMER MEMBERS.—A former  
18       member of the Council may return to the Council  
19       only if the member has not been a member for a pe-  
20       riod of 2 years.

21           (5) INITIAL APPOINTMENTS.—Initial appoint-  
22       ments to the Council shall be for terms of 1, 2, and  
23       3 years, and shall be staggered to provide for the se-  
24       lection of 7 members each year.

25       (f) FUNCTIONS.—

1           (1) IN GENERAL.—The Council shall develop  
2       programs and projects and enter into contracts or  
3       agreements for implementing this Act, including pro-  
4       grams to—

5                   (A) enhance consumer and employee safety  
6       and training;

7                   (B) provide for research and development  
8       of clean and efficient propane utilization equip-  
9       ment;

10                  (C) inform and educate the public about  
11       safety and other issues associated with the use  
12       of propane; and

13                  (D) provide for the payment of the costs of  
14       implementing subparagraphs (A) through (C)  
15       with funds collected under this Act.

16           (2) COORDINATION.—The Council shall coordi-  
17       nate activities with industry trade associations and  
18       others as appropriate to provide efficient delivery of  
19       services and to avoid unnecessary duplication of ac-  
20       tivities.

21       (g) USE OF FUNDS.—

22           (1) UNITED STATES AGRICULTURE INDUS-  
23       TRY.—Not less than 5 percent of the funds collected  
24       through assessments under this Act shall be used for

1 programs and projects intended to benefit the agri-  
2 culture industry in the United States.

3 (2) COORDINATION.—The Council shall coordi-  
4 nate the use of funds under paragraph (1) with agri-  
5 culture industry trade associations and other organi-  
6 zations representing the agriculture industry.

7 (3) USE OF PROPANE AS AN OVER-THE-ROAD  
8 MOTOR FUEL.—The percentage of funds collected  
9 through assessments under this Act to be used in  
10 any year for projects relating to the use of propane  
11 as an over-the-road motor fuel shall not exceed the  
12 percentage of the total market for odorized propane  
13 that is used as an over-the-road motor fuel, based on  
14 an historical average of the use of propane as an  
15 over-the-road motor fuel during the 3-year period  
16 preceding the year in which the funds are used.

17 (h) PRIORITIES.—Issues related to research and de-  
18 velopment, safety, education, and training shall be given  
19 priority by the Council in the development of programs  
20 and projects.

21 (i) ADMINISTRATION.—

22 (1) CHAIRMAN.—The Council shall select a  
23 Chairman from among the members of the Council.

1           (2) OFFICERS.—The Council shall select from  
2           among the members of the Council such officers as  
3           the Council considers necessary.

4           (3) COMMITTEES.—The Council may establish  
5           committees and subcommittees of the Council.

6           (4) RULES AND BYLAWS.—The Council shall  
7           adopt rules and bylaws for the conduct of business  
8           and the implementation of this Act.

9           (5) INDUSTRY COMMENT AND RECOMMENDA-  
10          TIONS.—The Council shall establish procedures for  
11          the solicitation of industry comment and rec-  
12          ommendations on any significant plan, program, or  
13          project to be funded by the Council.

14          (6) ADVISORY COMMITTEES.—The Council may  
15          establish advisory committees of persons other than  
16          Council members.

17          (j) ADMINISTRATIVE EXPENSES.—

18               (1) LIMITATION ON EXPENSES.—The adminis-  
19               trative expenses of operating the Council (not in-  
20               cluding costs incurred in the collection of the assess-  
21               ment under section 6) plus amounts paid under  
22               paragraph (2) shall not exceed 10 percent of the  
23               funds collected by the Council in any fiscal year.

1           (2) REIMBURSEMENT.—The Council shall an-  
2 nually reimburse the Secretary for costs incurred by  
3 the United States relating to the Council.

4           (3) LIMITATION ON REIMBURSEMENT.—A reim-  
5 bursement under paragraph (2) for any fiscal year  
6 shall not exceed the amount that the Secretary de-  
7 termines is the average annual salary of employees  
8 of the Department of Energy.

9           (k) BUDGET.—

10           (1) REVIEW AND COMMENT.—Prior to August  
11 1 of each year, the Council shall publish for public  
12 review and comment a budget plan for the next cal-  
13 endar year, including the probable costs of all pro-  
14 grams, projects, and contracts and a recommended  
15 rate of assessment sufficient to cover the costs.

16           (2) SUBMISSION.—Following review and com-  
17 ment under paragraph (1), the Council shall submit  
18 the proposed budget to the Secretary and to Con-  
19 gress.

20           (3) RECOMMENDATIONS BY SECRETARY.—The  
21 Secretary may recommend any program or activity  
22 that the Secretary considers appropriate.

23           (l) RECORDS.—

1           (1) IN GENERAL.—The Council shall keep min-  
2       utes, books, and records that clearly reflect all of the  
3       actions of the Council.

4           (2) PUBLIC AVAILABILITY.—The Council shall  
5       make the minutes, books, and records available to  
6       the public.

7           (3) AUDIT.—The Council shall have the books  
8       audited by a certified public accountant at least once  
9       each fiscal year and at such other times as the  
10      Council may determine.

11          (4) COPIES.—Copies of an audit under para-  
12      graph (3) shall be provided to all members of the  
13      Council, all qualified industry organizations, and any  
14      other member of the industry on request.

15          (5) NOTICE.—The Council shall provide the  
16      Secretary with notice of meetings.

17          (6) ADDITIONAL REPORTS.—The Secretary may  
18      require the Council to provide reports on the activi-  
19      ties of the Council and on compliance, violations,  
20      and complaints regarding the implementation of this  
21      Act.

22      (m) PUBLIC ACCESS TO COUNCIL PROCEEDINGS.—

23          (1) IN GENERAL.—All meetings of the Council  
24      shall be open to the public.

1           (2) NOTICE.—The Council shall provide the  
2 public at least 30 days' notice of Council meetings.

3           (3) MINUTES.—The minutes of all meetings of  
4 the Council shall be made readily available to the  
5 public.

6           (n) ANNUAL REPORT.—

7           (1) IN GENERAL.—Each year the Council shall  
8 prepare and make publicly available a report that in-  
9 cludes an identification and description of all pro-  
10 grams and projects undertaken by the Council dur-  
11 ing the previous year and those planned for the up-  
12 coming year.

13           (2) RESOURCES.—The report shall detail the  
14 allocation and planned allocation of Council re-  
15 sources for each program and project.

16 **SEC. 6. ASSESSMENTS.**

17           (a) IN GENERAL.—The Council may levy an assess-  
18 ment on odorized propane in accordance with this section.

19           (b) AMOUNT.—

20           (1) INITIAL ASSESSMENT.—The Council shall  
21 set the initial assessment at no greater than  $\frac{1}{10}$   
22 cent per gallon of odorized propane sold and placed  
23 into commerce.

24           (2) SUBSEQUENT ASSESSMENTS.—Subsequent  
25 to the initial assessment, annual assessments shall

1 be sufficient to cover the costs of the plans and pro-  
2 grams developed by the Council.

3 (3) ASSESSMENT MAXIMUM.—An assessment  
4 shall not be greater than  $\frac{1}{2}$  cent per gallon of odor-  
5 ized propane, unless approved by a majority of those  
6 voting in a referendum in the producer class and the  
7 retail marketer class.

8 (4) MAXIMUM INCREASE.—An assessment may  
9 not be raised by more than  $\frac{1}{10}$  cent per gallon of  
10 odorized propane annually.

11 (5) OWNERSHIP.—The owner of odorized pro-  
12 pane at the time of odorization, or at the time of im-  
13 port of odorized propane, shall make the assessment  
14 based on the volume of odorized propane sold and  
15 placed into commerce.

16 (6) DUE DATE.—Assessments shall be payable  
17 to the Council on a monthly basis not later than the  
18 25th of the month following the month in which the  
19 assessment is made.

20 (7) EXPORTED PROPANE.—Propane exported  
21 from the United States is not subject to the assess-  
22 ment.

23 (8) LATE FEE.—The Council may establish a  
24 late payment charge and rate of interest to be im-



1 posed on a person that fails to remit or pay to the  
2 Council any amount due under this Act.

3 (c) ALTERNATIVE COLLECTION RULES.—The Coun-  
4 cil may establish an alternative means of collecting the as-  
5 sessment if the Council determines that the alternative  
6 means is more efficient and effective.

7 (d) INVESTMENT OF FUNDS.—Pending disbursement  
8 pursuant to a program, plan, or project, the Council may  
9 invest funds collected through assessments, and any other  
10 funds received by the Council, only in—

11 (1) obligations of the United States or an agen-  
12 cy of the United States;

13 (2) general obligations of a State or political  
14 subdivision of a State;

15 (3) an interest-bearing account or certificate of  
16 deposit of a bank that is a member of the Federal  
17 Reserve System; or

18 (4) obligations fully guaranteed as to principal  
19 and interest by the United States.

20 (e) STATE PROGRAMS.—

21 (1) IN GENERAL.—The Council shall establish a  
22 program coordinating the operation of the Council  
23 with the programs of any State propane education  
24 and research council created by State law, or any  
25 similar entity.

1           (2) COORDINATION.—The coordination shall in-  
2       clude a joint or coordinated assessment collection  
3       process, a reduced assessment, or an assessment re-  
4       bate.

5           (3) REDUCED ASSESSMENT OR REBATE.—A re-  
6       duced assessment or rebate shall be 20 percent of  
7       the regular assessment collected in a State under  
8       this section.

9           (4) PAYMENT OF ASSESSMENT REBATES.—An  
10      assessment rebate may be paid only to—

11           (A) a State propane education and re-  
12      search council created by State law or regula-  
13      tion that meets requirements established by the  
14      Council for specific programs approved by the  
15      Council; or

16           (B) a similar entity, such as a foundation  
17      established by the retail propane gas industry  
18      in a State that meets requirements established  
19      by the Council for specific programs approved  
20      by the Council.

21   **SEC. 7. COMPLIANCE.**

22           (a) IN GENERAL.—The Council may bring a civil ac-  
23      tion in a United States district court to compel compliance  
24      with an assessment levied by the Council under this Act.

1 (b) COSTS.—A successful action for compliance under  
 2 this section may require payment by the defendant of the  
 3 costs incurred by the Council in bringing the compliance  
 4 action.

5 **SEC. 8. LOBBYING RESTRICTIONS.**

6 No funds collected by the Council shall be used in  
 7 any manner to influence legislation or an election, but the  
 8 Council may recommend to the Secretary changes in this  
 9 Act or other statutes that would further the purposes of  
 10 this Act.

11 **SEC. 9. MARKET SURVEY AND CONSUMER PROTECTION.**

12 (a) PRICE ANALYSIS.—

13 (1) IN GENERAL.—Not later than 2 years after  
 14 establishment of the Council and annually there-  
 15 after, the Secretary of Commerce, using only data  
 16 provided by the Energy Information Administration  
 17 and other public sources, shall prepare and make  
 18 available to the Council, the Secretary, and the pub-  
 19 lic an analysis of changes in the price of propane rel-  
 20 ative to other energy sources.

21 (2) METHODOLOGY.—

22 (A) IN GENERAL.—The propane price  
 23 analysis shall compare indexed changes in the  
 24 price of consumer grade propane to a composite  
 25 of indexed changes in the price of residential

1 electricity, residential natural gas, and refiner  
2 price to end-users of number 2 fuel oil on an  
3 annual national average basis.

4 (B) ROLLING AVERAGE PRICE.—For pur-  
5 poses of indexing changes in consumer grade  
6 propane, residential electricity, residential natu-  
7 ral gas, and end-user number 2 fuel oil prices,  
8 the Secretary of Commerce shall use a 5-year  
9 rolling average price beginning with the year 4  
10 years prior to the establishment of the Council.

11 (b) AUTHORITY TO RESTRICT ACTIVITIES.—

12 (1) IN GENERAL.—If in any year the 5-year av-  
13 erage rolling price index of consumer grade propane  
14 exceeds the 5-year rolling average price composite  
15 index of residential electricity, residential natural  
16 gas, and refiner price to end-users of number 2 fuel  
17 oil in an amount greater than 10.1 percent, the ac-  
18 tivities of the Council shall be restricted to research  
19 and development, training, and safety matters.

20 (2) NOTIFICATION.—The Council shall inform  
21 Congress and the Secretary of Energy of any restric-  
22 tion of activities under this subsection.

23 (3) REANALYSIS.—On the expiration of each  
24 180-day period beginning on the date on which ac-  
25 tivities are restricted under paragraph (1), the Sec-

1       retary of Commerce shall conduct a new propane  
2       price analysis described in subsection (a).

3           (4) END OF RESTRICTION.—Activities of the  
4       Council shall continue to be restricted under this  
5       subsection until the percentage described in para-  
6       graph (1) is 10.1 percent or less.

7       **SEC. 10. PRICING.**

8       Notwithstanding any other provision of this Act, the  
9       price of propane shall be determined by market forces.  
10      The Council shall take no action, and no provision of this  
11      Act shall establish an agreement to, pass along to consum-  
12      ers the cost of the assessment provided for in section 6.

13      **SEC. 11. RELATION TO OTHER PROGRAMS.**

14      Nothing in this Act shall preempt or supersede any  
15      other program relating to propane education and research  
16      organized and operated under the laws of the United  
17      States or any State.

18      **SEC. 12. REPORTS.**

19      (a) IN GENERAL.—Not later than 2 years after the  
20      date of enactment of this Act, and not less than once every  
21      2 years thereafter, the Secretary of Commerce shall pre-  
22      pare and submit to Congress and the Secretary a report  
23      examining whether operation of the Council, in conjunc-  
24      tion with the cumulative effects of market changes and  
25      Federal programs, has had an effect on propane consum-

1 ers, including residential, agriculture, process, and nonfuel  
2 users of propane.

3 (b) CONSIDERATION BY THE SECRETARY OF COM-  
4 MERCE.—The Secretary of Commerce shall—

5 (1) consider and, to the extent practicable, in-  
6 clude in the report submissions by propane consum-  
7 ers;

8 (2) consider whether there have been long-term  
9 and short-term effects on propane prices as a result  
10 of Council activities and Federal programs; and

11 (3) consider whether there have been changes in  
12 the proportion of propane demand attributable to  
13 various market segments.

14 (c) RECOMMENDATIONS.—To the extent that the re-  
15 port demonstrates that there has been an adverse effect  
16 on propane prices, the Secretary of Commerce shall in-  
17 clude recommendations for reversing or mitigating the ef-  
18 fect.

19 (d) FREQUENT REPORTS.—On petition by an af-  
20 fected party or on request by the Secretary of Energy,  
21 the Secretary of Commerce may prepare and submit the  
22 report required by this section at less than 2-year inter-  
23 vals.

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